No. 329

IN THE

SUPREME COURT

OF THE UNITED STATES

OCTOBER TERM, 1951

M. P. MULLANEY, Commissioner of Taxation of the Territory of Alaska,

Petitioner,

vs.

OSCAR ANDERSON and ALASKA FISHERMEN'S UNION

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENTS

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OPINION BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is found in 191 F. 2d 123 (R. 162-195).

QUESTION PRESENTED

Whether the Territory of Alaska has power to impose a tax of $50 on nonresident fishermen engaged in the fisheries of the United States in all the waters of Alaska, by means of a statute which imposes a tax of only $5 on fishermen in the same waters, who reside in the Territory.

STATUTES INVOLVED

The statutes involved are Ch. 66, Session Laws of Alaska, 1949; Act of Aug. 24, 1912, 37 Stat. 512, 514; 48 USCA

Secs. 23, 24, 77, and Act of June 6, 1924, c. 272, sec. 1, 8; 43 Stat. 464, 467; 48 USCA Sec. 222, 228. The pertinent portions are set forth in the Appendix, pp. i to iv.

STATEMENT OF THE CASE

This action was brought to enjoin the Tax Commissioner of Alaska from enforcing the provisions of Ch. 66, Session Laws of Alaska, 1949, and collecting a tax of $50 from nonresident fishermen against a tax of $5 from resident fishermen, and to obtain a declaration of the Court that the statute is void.

Respondents are residents of the States of Oregon, Washington and California. They are brought to Alaska each year during the salmon fishing season, which varies from twenty days in Bristol Bay to two months elsewhere (R. 19-20). They come at the expense and under the direction of salmon packing companies, which pack and ship salmon. They arrive a few days before the opening of the fishing season and after it is closed in Bristol Bay, they remain about ten days loading the ships (R. 65, 81-82). Residents, from whom the $5 license fee is exacted, work a much longer period each year, as many of them are employed in the spring before the opening of the season, and they remain after the ships and nonresidents are gone, being employed in taking up floating equipment, etc. (R. 82).

The nonresidents involved in the case are members of a

union, which bargains collectively with the packer employers (R. 54). They travel from their home states to Alaska under contract; they engage in fishing and in loading the fish for shipment, and then return to their homes when the season is over and the fish are loaded on the ships. While in the Territory they are maintained by their employers without any cost or burden on the Territory. They receive no benefits from the Territory or its government. The testimony of petitioner was to the effect that it required 90% more work to collect the tax from nonresidents than was required to collect from residents. The District Court held that the Act of the Alaska legislature was valid and Findings and Conclusions were entered (R. 18). A decree was entered dismissing plaintiff's complaint (R. 23). In its conclusions, the trial court held that Chapter 66 did not burden interstate commerce in violation of Article I, Sec. 8 of the Constitution, and that it did not violate any of the other laws or constitutional provisions invoked by respondents in support of their asserted rights (R. 22).

The United States Court of Appeals reversed on the ground that the statute in question was in violation of Article I, Sec. 8 of the Constitution of the United States (R. 162). The court declined to pass upon the question raised by respondents that Chapter 66 was in conflict with Article IV, Sec. 2 of the Constitution of the United States as extended to Alaska by Section 3 of the Organic Act (37 Stat.

512), because of the decision in the case of *Haavik v. Alaska Packers' Association*, (1924) 263 U. S. 510, but called attention to the later case of *Duncan v. Kahanamoku*, (1946) 327 U. S. 304, in which this Court "expressly held that Sec. 5 of the Hawaiian Organic Act which is identical with Sec. 3 of the Alaska Organic Act, operated to extend certain constitutional provisions to the Territory of Hawaii" (R. 186-187).

SUMMARY OF ARGUMENT

1. The interstate commerce clause of the Constitution of the United States found in Article I, Sec. 8, restricts territories in the same way that it restricts the states.

2. The tax imposed by Chapter 66, Session Laws of Alaska, 1949, violates the interstate commerce clause, as held by the United States Court of Appeals for the Ninth Circuit.

3. Since the Organic Act of Alaska, c. 387, Sec. 3, 37 Stat. 512, provides that the Constitution of the United States shall have the same "force and effect" within the Territory as elsewhere in the United States, the privileges and immunities clause of Article IV, Sec. 2 of the Constitution is applicable to the Territory and Chapter 66 was passed in violation of that clause and in violation of the Fourteenth Amendment to the Constitution.

4. Chapter 66 is in violation of the Civil Rights Act, Sec. 41, Title 8 USCA. This Act is made expressly applicable

to the territories and it invokes the same limitations as the equal protection clause of the Fourteenth Amendment, and the Fourteenth Amendment describes substantially the same limitations as the privileges and immunities clause of Article IV, Sec. 2 of the Constitution.

5. The provisions of Chapter 66, which levy a tax on non-resident fishermen ten times greater than the tax on resident fishermen, is a violation of the White Act passed by Congress for the regulation of fisheries of Alaska (Act of June 6, 1924, c. 272, Sec. 1, 43 Stat. 454; 48 USCA Sec. 222).

ARGUMENT

I.

The Interstate Commerce Clause of the Constitution of the United States Restricts Territories As Well As States.

The Organic Act of Alaska (c. 387, Sec. 3, 37 Stat. 512; 48 USCA 23) provides that

> "The Constitution of the United States and all laws thereof which are not locally inapplicable shall have the same force and effect within the said territory as elsewhere in the United States * * * ."

The Supreme Court decided in 1906 in *McLean v. Denver & Rio Grande Railroad Co.*, (1906) 203 U.S. 38, that the commerce clause (Article I, Sec. 8 of the Constitution), imposes the same restrictions upon territorial legislatures as it does upon the legislatures of the states. In that case an act of the legislature of the Territory of New Mexico,

providing for the inspection of hides and imposing a fee to cover the cost of inspection, was attacked on the ground that, as applied to interstate shipments of hides, the law violated the commerce clause. The Supreme Court held that

> "The exclusive power to regulate interstate commerce is vested by the Constitution in Congress, and * * * other laws which undertake to regulate such commerce or impose burdens upon it are invalid."

But that

> "It is equally well settled that a state or territory for the same reasons, in the exercise of the police power may make rules and regulations not conflicting with legislation of Congress upon the same subject, and not amending its regulations of interstate commerce."

The Supreme Court also recognized that the commerce clause operates in the case of territories the same as in the case of states, in *Inter-Island Company v. Hawaii*, (1938) 305 U.S. 306. An Hawaiian statute regulating public utilities imposed a fee upon all public utilities doing business in the Territory. The Act was made effective upon its approval by Congress. Congress amended the Act and, as amended, ratified and approved it. It was the Congressional amendments that brought the Inter-Island Company within the statute. To the contention that the statute constituted an invalid burden on interstate and foreign commerce, the Supreme Court answered that Congress has the power to regulate interstate commerce and therefore, even if the petitioner was engaged in interstate and foreign commerce, Congress

has exercised its power in this case by expressly ratifying the Hawaiian statute and by expressly subjecting the petitioner to the statute. Similarly, if Congress had passed a nonresident fisherman's license tax it might not be attacked upon the ground that the statute violates the commerce clause, because Congress would then be exercising the very power which the commerce clause vests in Congress exclusively. But, as the Supreme Court in the *Inter-Island* case recognized, the exclusive grant of power to Congress necessarily prohibits any other jurisdiction, state or territory from exercising the power.

In *Territory of Alaska v. Sears, Roebuck & Co.*, (1947) 79 F. Supp. 668, the District Court of Alaska for the First Judicial Division held that the interstate commerce clause is applicable to the acts of the Alaskan legislature and that a license tax imposed upon a taxpayer doing only interstate business is invalid.

See also *Alaska Steamship v. Mullaney*, (9th Cir. 1950) 180 F. 2d 805.

II.

The Tax Imposed on Nonresident Fishermen Is in Violation of the Interstate Commerce Clause of the Constitution.

The Court below held that the tax in question created a burden on interstate commerce, stating

"Thus it is apparent that so far as Alaska fisheries

> are concerned, they are in the center of a great interstate movement which begins when the fishermen start north to fish and terminates with the delivery of the processed product to the dealers in the states. The catching of the fish is but an interlude in this large flow of commerce." (R. 167-8.)

The transportation of these nonresident fishermen from the states of Washington, Oregon and California to Alaska to engage in this industry each summer constitutes interstate commerce and they are surely, as the Court said, "in the center of a great interstate movement."

This Court has held many times that the movement of persons from one state to another constitutes interstate commerce. In the case of *Caminetti v. United States*, (1917) 242 U.S. 470, it was held to be a regulation of interstate commerce for Congress to pass what is known as the "White Slave Law." The Court upheld the conviction of Caminetti and Diggs for transporting women from California to Nevada for immoral purposes.

In the case of *Edwards v. California*, (1941) 314 U.S. 160, a California statute prescribing a penalty for transporting into the state an indigent person, knowing him to be such, was held to be in violation of Article I, Sec. 8 of the Constitution of the United States and therefore void.

The nonresident fishermen in this case entered into contracts in Seattle with their employers. They were transported from the states of Washington, Oregon and California to

Alaska by their employers for a specific purpose, namely, to harvest the annual crop from the fisheries of the United States. They engaged in that work each year during the brief fishing and canning seasons. They loaded the product on ships and then they were transported home again by their employers.

If Caminetti and Diggs were in interstate commerce when transporting two women from Sacramento to Reno for immoral purposes, surely the salmon packers were also engaged in interstate commerce in transporting the respondents to Alaska from the states for the highly moral and essential purpose of obtaining a part of the nation's food supply.

In the case of *Territory of Alaska v. Sears, Roebuck & Co.*, (1947) 79 F. Supp. 668, the District Court for Alaska held to be invalid the application of a taxing statute when applied to the business of Sears, Roebuck & Co. in its shipment of goods into the Territory of Alaska:

> Petitioner argues that since various discriminatory license taxes on nonresident fishermen have been in effect in Alaska for some years, as shown in the appendix to his brief, and since Congress had the power to disapprove them and had not done so, therefore the acquiescence of Congress must be taken to establish the fact that the language in the Organic Act (Sec. 3), which extends the provisions of the Constitution to the Territory, is not what it seems.

However, as said by this Court in *Inter-Island Steam Navigation Co. v. Territory of Hawaii*, (1938) 305 U.S. 306,

> "Congress may not only abrogate laws of the Territory's legislatures, but it may itself legislate directly for the local government. It may make a void act of the Territorial legislature valid, and a valid act void * * *." (Citing authorities.)

However, Congress has not validated any of these non-resident fishermen licenses which have been in force in Alaska, as shown in the appendix to petitioner's brief. In the *Inter-Island Steam Navigation Company* case, Congress did expressly validate an act of the legislature of Hawaii and we may assume that until it does so it may not be said that the mere lapse of time amounts to acquiescence by Congress or a ratification of the local law. That is much like saying that the legislature may pass and make valid any act, however unconstitutional, unless and until Congress disapproves it.

Congress does not have the duty of sitting as a watch-dog to see whether Constitutional rights of any person or class of persons are violated. That is a matter for the courts; and the courts do not even act to declare acts of legislatures valid or invalid, but they act only to protect the rights of persons or classes of persons who properly plead or prove that their rights have been violated by the operation of some invalid or unconstitutional law.

Congress has the sole power to regulate interstate commerce; it does not have the duty of doing anything about a territorial act which enters this field. It is left to some individual who has been deprived of his rights to challenge the invalid law in the courts.

The commerce clause is to be distinguished from the privileges and immunities clause of Article IV, Sec. 2 and of the Fourteenth Amendment. The commerce clause gives Congress plenary power over interstate and foreign commerce and as a necessary consequence it has the secondary effect of a restriction upon the power of all other jurisdictions, territories as well as states, in the premises.

The first clause of the first sentence of Section 3 of the Organic Act of Alaska reads:

> "The Constitution of the United States and all the laws thereof which are not locally inapplicable, shall have the same force and effect within the said Territory as elsewhere in the United States." (c. 387, Sec. 3, 37 Stat. 512; 48 USCA 23.)

Let us consider the meaning of the words "elsewhere in the United States." Now what is the "force and effect" of the Constitution in California and of Article I, Sec. 8? Is it not that Congress alone has the exclusive power to tax the privilege to engage in interstate commerce? The Court below very aptly said:

> "We cannot conceive that in granting legislative power to the Territorial legislature it was intended that

> the power should exceed that possessed by the legislature of a state in dealing with commerce. The words 'all rightful subjects of legislation' describing the extent to which the legislative power of the Territory should extend (48 USCA, Sec. 77), do not include the imposition upon commerce as that here involved, of burdens which a state might not create under like circumstances. 'All rightful subjects of legislation' must be held to refer to matters local to Alaska." (R. 172.)

Petitioner argues in his brief that since the Congress has full power to legislate for Alaska and since it has set up the form of Territorial government provided in the Organic Act, the legislature could exercise whatever power Congress could with reference to the control of interstate commerce.

Petitioner cites the case of *Buscaglia v. Ballester*, (1947) 162 F. 2d 805, certiorari denied (1947) 332 U.S. 816. In that case the Court of Appeals for the First Circuit in discussing a Puerto Rican tax which clearly would not have violated the commerce clause had it been enacted by a state, suggested that the commerce clause is not applicable to territories because Congress has the power to limit territorial action to the extent it chooses under Article IV, Sec. 3 of the Constitution. By its very terms, however, the commerce clause gives to Congress the exclusive power to regulate foreign and interstate commerce and, as the cases cited above demonstrate, no other jurisdiction, state or territory can exercise the power. If Alaska can pass a statute regulating or burdening foreign or interstate commerce then it must be that Congress has delegated its powers over foreign and

interstate commerce to Alaska. Sections 3 and 9 of the Alaska Organic Act would indicate that to the contrary Congress has very carefully limited the powers of the Alaskan legislature to exclude any power to regulate or burden foreign or interstate commerce. Furthermore, any such attempted delegation of power to the Alaskan legislature would appear to be invalid as an unconstitutional delegation of power.

Panama Refining Co. v. Ryan, (1935) 293 U.S. 388, and

Schechter Corp. v. United States, (1935) 295 U.S. 495.

There is a difference between the Alaska Organic Act and that of Puerto Rico. In Alaska it is provided that the Constitution of the United States shall apply with the same force and effect as elsewhere in the United States. There is no such provision with reference to Puerto Rico.

In *Haavik v. Alaska Packers' Association*, (1924) 263 U.S. 510, it was held without considering the effect of the Organic Act, that the privileges and immunities clause of Article IV, Sec. 2 does not apply to Alaska. Whatever the validity of this conclusion, it has no bearing upon the application of the commerce clause to Alaska. The only reference we find to the commerce clause in the *Haavik* case is a brief reference to the fact that the appellant in his brief contended that the tax there in question was a matter "in which interstate commerce alone is involved" and that the Court in conclud-

ing the opinion states, "None of the points relied upon by appellant is well taken." There is no discussion of the commerce clause and no indication in the opinion as to how it was involved or what consideration was given it.

As pointed out above, the privileges and immunities clause of Article IV, Sec. 2 and the Fourteenth Amendment are by their terms limitations upon the powers of the states; the commerce clause is an exclusive grant of power to Congress and by necessary implication a limitation upon the powers of all other jurisdictions, territorial as well as state. The dissenting judge in the Court below suggests that the citation in the *Haavik* case of *Alaska v. Troy*, (1922) 258 U.S. 101, shows that the Court in the *Haavik* case did consider the interstate commerce feature, because in the *Troy* case the statute in question related directly to commerce. In the *Troy* case, however, the statute involved was an act of Congress and the case, therefore, has no bearing whatsoever upon the question whether a territorial legislature is free from interstate commerce restrictions imposed upon the states.

The Court below (R. 171) cited from the opinion in *Freeman v. Hewitt*, (1946) 329 U.S. 249, 252, as follows:

> "Our starting point is clear. In two recent cases we applied the principle that the Commerce Clause was not merely an authorization to Congress to enact laws for the protection and encouragement of commerce among the States, but by its own force created an area of trade

free from interference by the States. In short, the Commerce Clause even without implementing legislation by Congress is a limitation upon the power of the States. *Southern Pacific Co. v. Arizona*, 325 U.S. 761; *Morgan v. Virginia*, 328 U.S. 373. In so deciding we reaffirmed, upon fullest consideration, the course of adjudication unbroken through the Nation's history."[10]

The opinion of the Court below then states:

"It cannot be said that the Alaska legislature has any greater freedom in burdening commerce between the States and the Territories than it would have if Alaska were a State."

It is suggested by the petitioner that the Alaskan legislature is an arm of Congress with power of legislation equal to those possessed by Congress; but we submit that the legislature is not an arm of Congress, but rather a creature of Congress with only such powers as have been conferred upon it and subject to all the limitations and restrictions set forth in the Organic Act.

The Constitution extends to Congress the sole power to regulate interstate commerce and this power cannot be delegated.

Panama Refining Co. v. Ryan, (1935) 293 U.S. 388; *Schechter Corp. v. United States*, (1935) 295 U.S. 495.

[10] The rationale of this aspect of the Commerce Clause is stated in *Southern Pacific Co. v. Arizona, supra*, at p. 768.

III.

Chapter 66 Is in Violation of the Privileges and Immunities Clause of Article IV, Sec. 2 of the Constitution.

Aside from its effect on interstate commerce and in addition to being a violation of the commerce clause of the Constitution, Chapter 66 is void because it conflicts with Article IV, Sec. 4 of the Constitution.

When the Organic Act of Alaska was passed by Congress the Constitution was extended to the Territory with all of its provisions, including Article IV, Sec. 2 which contains the covenant that

> "The citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states."

It would appear, therefore, that the citizens of Washington, Oregon and California who are employed in the fisheries of the United States in the waters of Alaska are entitled to the same treatment as citizens of Alaska employed in the same fisheries.

Counsel for petitioner urge that there are certain provisions of the Constitution that cannot possibly apply to a territory and therefore cannot have the same "force and effect" therein as they do in the states. We grant that there are certain Constitutional provisions mentioned in petitioner's brief which are not in operation in the Territory, but

surely Section 8 of Article I and Section 2 of Article IV apply there as do many other parts of the Constitution and its amendments. If it were not so, why would Congress in Section 3 of the Organic Act say that the Constitution should have the same "force and effect" in Alaska as elsewhere in the United States? It was not provided that only a part of the Constitution should apply, but the Act says "the Constitution of the United States." It could well have limited the application of the Constitution to Alaska as the Court said in *Duncan v. Kahanamoku*, (1946) 327 U.S. 304, 317, it could have done but did not do by the use of identical language in the Organic Act of Hawaii.

Petitioner urges that Chapter 66, the validity of which is challenged in this case, may be upheld on the authority of *Haavik v. Alaska Packers' Association*, (1924) 263 U.S. 510. However, in the *Haavik* case the gist of the opinion is to the effect that if Congress could have levied a $5 tax there under consideration, then the legislature could do so and that the power of the Territory was derived from the provision in the Organic Act which endowed the legislature with authority to deal with "all rightful subjects of legislation" not inconsistent with the Constitution and the laws of the United States.

The discussion of the effect of Article IV, Sec. 2 of the Constitution is not very clear. It is simply stated:

> "We are not here concerned with taxation by a state. The license tax cannot be said to conflict with Article IV, Sec. 2 of the Constitution. * * * It applies only to nonresident fishermen; citizens of every state are treated alike. Only residents of the Territory are preferred."

It would seem, therefore, that the decision holds that Article IV, Sec. 2 can be applied only to states and it is a protection of citizens within the states, but that the legislature of Alaska under the authority given it in the Organic Act may transcend the powers possessed by the states and pass legislation which will abridge the rights of citizens of the various states coming into the Territory from the United States. In other words, this opinion would seem to hold that the legislature of Alaska can pass a law which will violate the privileges and immunities clause of the Constitution. However, since the *Haqvik* decision there have been some changes not only in the law but in the decisions of this Court, so that the *Haavik* decision is no longer applicable.

In the first place, six months after the *Haavik* decision Congress passed the White Act for the regulation of the fisheries of the United States in the waters of Alaska (Act of June 6, 1924, c. 272, Sec. 1, 43 Stat. 464; 48 USCA Sec. 222) which contains the following language:

> "* * * Nor shall any citizen of the United States be denied the right to take, prepare, cure or preserve fish or shellfish in any area of the waters of Alaska where fishing is permitted by the Secretary of Commerce."

Twenty-two years after the decision in the *Haavik* case this Court decided the case of *Duncan v. Kahanamoku, supra,* saying that the Constitution of the United States was extended to Hawaii by Section 5 of the Hawaiian Organic Act which is identical with Section 3 of the Alaska Organic Act. The Court said:

> "It follows that civilians in Hawaii are entitled to the Constitutional guarantee of a fair trial to the same extent as those who live in any other part of the country. We are aware that conditions peculiar to Hawaii might imperatively demand extraordinarily speedy and effective measures in the event of actual or threatened invasion. But this also holds true for other parts of the United States. Extraordinary measures in Hawaii, however necessary, are not supportable on the mistaken premise that Hawaiian inhabitants are less entitled to Constitutional protection than others, for here Congress did not, in the Organic Act, exercise whatever power it might have had to limit the application of the Constitution. Cf. Hawaii v. Mankichi, 190 U.S. 197. The people of Hawaii are therefore entitled to Constitutional protection to the same extent as the people of the 48 States." (327 U.S. 318.)

and in the Alaska Organic Act, Congress did not limit the application of the Constitution but expressly extended its provisions to the Territory.

Twenty-four years after the *Haavik* decision this Court decided the case of *Toomer v. Witsell,* (1948) 334 U.S. 385, and in that case there is a very full discussion of Article IV, Sec. 2 of the Constitution.

Unless the legislature of Alaska has powers transcending those of a State legislature under the Constitution, the same Constitution which Congress said, in passing the Organic Act in Section 3, should have "the same force and effect in the Territory as elsewhere in the United States," it is difficult to see where this case is not controlled by the decision in *Toomer v. Witsell, supra.* In that case this Court said, at p. 395, after quoting Article IV, Sec. 2 of the Constitution:

> "The primary purpose of this clause, like the clauses between which it is located—those relating to full faith and credit and to interstate extradition of fugitives from justice—was to help fuse into one Nation a collection of independent sovereign States. It was designed to insure to a citizen of State A, who ventures into State B the same privileges which the citizens of State B enjoy. For protection of such equality the citizen of State A was not to be restricted to the uncertain remedies afforded by diplomatic processes and official retaliation. Indeed without some provision of the kind removing from the citizens of each State the disabilities of alienage in the other States, and giving them equality of privilege with citizens of those States, the Republic would have constituted little more than a mere league of States; it would not have constituted the Union which now exists." (Citing *Paul v. Virginia*, 8 Wall. 168.)

The Court then discusses what a State may do, under this constitutional limitation on its powers, and says at pp. 398-399:

> "The State is not without power, for example to restrict the type of equipment used in its fisheries, to graduate license fees according to the size of the boats,

> or even to charge nonresidents a differential which would merely compensate the State for any added enforcement burden they may impose or for any conservation expenditures from taxes which only residents pay. We would be closing our eyes to reality, we believe, if we concluded that there was a reasonable relationship between the danger represented by non-citizens, as a class, and the severe discrimination practiced upon them."

Since the Territory does not regulate the fisheries, it has no power to regulate the size of boats, nor type of gear, nor seasons. The record negatives the inference that respondents enjoy any benefits from Territorial institutions or that their brief sojourn each year while engaged in catching, packing and loading fish, puts the Territory to the slightest expense. They make their contracts in the States; they submit to physical examinations there; they are flown to Alaska by their employers, those going to the Bristol Bay region and at the Federal air base; they are taken from the landing field to the several canneries and fishing areas by their employers and at their expense; the union polices its own members; hospital and medical expense is furnished by the employers; (R. 51-63). They do not bring any families with them (R. 59). This means they do not need any educational facilities for children. They are taken back to the States by the employer if discharged before the end of the season (R. 64). The employers furnish board and lodging (R. 59). They are transported back home at company expense after the ships are loaded (R. 66). Under the Alaska

law even if a man is injured, the employer is liable for his workmen's compensation (R. 64) and see Alaska Workmen's Compensation Act, Alaska Compiled Laws Annotated 1949, Sec. 43-3-1 et seq.

Furthermore, even the taxes imposed on respondents are mostly paid by the employers and deducted from their earnings (R. 72). The petitioner admitted that (R. 150-151). It is true that the petitioner testified that it was much more work (not more expense) to collect the fishermen's taxes from nonresidents than from residents and the witness Parke estimated that 90% of the work of collecting the tax would be with nonresidents (R. 120). The trial court, no doubt through inadvertence, in Finding No. 9 (R. 21) makes this "approximately 90% of the cost," although neither the witness Parke nor the petitioner Mullaney could give any figures as to the cost of collecting either resident or nonresident license taxes, and both were questioned on the point—Parke by cross-examination and Mullaney through written interrogatories (R. 31, 32, 148, 149). Even if the cost were 90% more, since the tax is 900% more, it could hardly be defended under *Toomer v. Witsell*, 334 U.S. 385. Petitioner could not show that any additional cost was incurred in collecting from nonresidents. Respondents did not have the burden in the trial court of proving something which could be obtained only from petitioner. The cost of collection of taxes, the differentials, if any, in the cost, the number of

residents subject to the tax as against the number of nonresidents, the amounts collected from each class were all matters peculiarly within the knowledge of the Tax Commissioner. Every effort was made to present this evidence to the court through the Commissioner and his deputy, and the result was that they said repeatedly they did not know. Surely, respondents, under the law and the rules, went as far as required and the burden was on petitioner, after he and his deputy were given the opportunity, to produce at least some approximate figures, to show the difference, if any, in the cost of collecting from nonresidents.

The law does not contain any reason for the so-called classification. It does not contain any preamble which might include some statement as to the reason or asserted justification for the discriminatory tax. The argument that it is more costly to collect from nonresidents than from residents finds no support in the record. Petitioner suggests in his brief that the Territory should not be required to show the extra cost of collecting from nonresidents to a mathematical certainty, and he asks what would be the measuring stick. The answer is that respondents did not ask for proof to a mathematical certainty, but insist that, applying the measuring stick suggested in *Toomer v. Witsell, supra*, the burden was on petitioner to present some facts to show that there was at least some difference in cost of collection if that were a fact.

The record shows that Chapter 66 was passed and ap-

proved on March 21, 1949, several months before the 1949 fishing season was opened. It applied to the whole calendar year. The suit was tried March 16, 1950 (R. 46). Petitioner then had behind him a full calendar year's experience. He must have had a full year's record of tax collection costs. And that is not all, for the suit was filed May 26, 1949 (R. 6) and, therefore, petitioner had nearly ten months' notice that he would be called upon to produce some records to justify the tax.

It seems rather far-fetched to argue that the additional tax is imposed on nonresidents because of the added expense in collecting the tax from them. The respondents are members of one union having 3200 nonresident fishermen members (R. 20). The Court of Appeals points out that the differential in the tax on these 3200 nonresident fishermen would amount to $144,000 per annum. The record does not show exactly how many additional nonresident fishermen there are who belong to other unions. The Court below stated that it may be inferred from the record that the differential collected from all nonresident fishermen would be not less than twice $144,000. If so, this would amount to $288,000 per annum or $576,000 for the biennium. Now the entire appropriation for the office of the Tax Commissioner to collect all taxes in the Territory for the biennium beginning April 1, 1949, was $500,000 ($250,000 per year) (c. 114 Session Laws Alaska 1949, p. 308).

It would appear, therefore, that the differential in the tax levied on nonresident fishermen would produce $38,000 a year more than the entire appropriation for all tax collection, including property and income tax, tobacco and liquor tax, school tax, and the multitudinous taxes levied on fisheries, and not only of collecting them but of paying the total cost of the entire administration of the Tax Commissioner's office.

IV.

Chapter 66 Violates the Fourteenth Amendment and the Civil Rights Act, R. S. Sec. 1977; Sec. 41, Title 8 USCA.

As we have pointed out hereinabove, the commerce clause gives Congress plenary power to legislate concerning interstate and foreign commerce and, as a necessary consequence it has the secondary effect of a restriction upon the power of all other jurisdictions, territories, as well as states, in the premises. The privileges and immunities clause of Article IV, Sec. 2 and the Fourteenth Amendment, on the other hand, are by their terms prohibitions upon the states. The application of these provisions to territories of course depends upon whether Congress has determined that they shall be extended to the territories. If we concede that there are certain decisions, including the *Haavik* case and the cases of *South Puerto Rico Sugar Co. v. Buscaglia* (1st Cir. 1946) 154 F. 2d 96, and *Anderson v. Scholes*, (1949)

83 F. Supp. 681, which hold that the privileges and immunities clause of Article IV, Sec. 2 and the provisions of the Fourteenth Amendment do not apply to territories and that these constitutional provisions by their terms impose restrictions upon the powers of the states, we respectfully submit, however, that in none of these cases is it considered that Congress might not extend the application of these provisions to the territories and we urge that it did so extend them in the cases of Hawaii and Alaska by means of Section 5 of the Organic Act of Hawaii and Section 3 of the Organic Act of Alaska. These two provisions of these two Organic Acts have been discussed hereinabove and the case of *Duncan v. Kahanamoku*, (1946) 327 U.S. 304, would seem to settle the matter.

In *Balzac v. Puerto Rico*, (1922) 258 U.S. 298, the Supreme Court recognizes that Congress could make applicable to territories' constitutional provisions which otherwise would not apply, and in *Serra v. Mortiga*, (1907) 204 U.S. 470, the Supreme Court specifically held that Congress by statute had extended to the Philippine Islands the guarantees of the due process and equal protection clauses of the Fourteenth Amendment. The language of Section 3 of the Alaskan Organic Act and the obvious propriety of limiting the powers of a territorial legislature in the same manner that the Fourteenth Amendment and the privileges and immunities clause of Article IV, Section 2 limits the states,

demonstrate that Congress intended that these provisions should be applicable to Alaska.

That the Fourteenth Amendment is applicable to Alaska was assumed in *Alaska Fish Co. v. Smith*, (1921), 255 U.S. 44, and *W. C. Peacock & Co. v. Pratt*, (9th Cir. 1903) 121 F. 772.

The Fourteenth Amendment and the Civil Rights Act are discussed by the Court in the case of *Takahashi v. Fish and Game Commission*, (1948) 334 U.S. 410, as follows:

> "* * * Moreover, Congress, in the enactment of a comprehensive legislative plan for the nation-wide control and regulation of immigration and naturalization, has broadly provided:
>
> "'All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind and to no other.' 16 Stat. 140, 144, 8 U.S.C. Sec. 41, 8 U.S.C.A. Sec. 41.
>
> "The protection of this section has been held to extend to aliens as well as to citizens. (Citing authorities.). Consequently the section and the Fourteenth Amendment on which it rests in part protect 'all persons' against state legislation bearing unequally upon them either because of alienage or color. See *Hurd v. Hodge*, 334 U.S. 24, 68 S. Ct. 847. The Fourteenth Amendment and the laws adopted under its authority thus embody a general policy that all persons lawfully in this country shall abide 'in any state' on an equality

> of legal privileges with all citizens under non-discriminatory laws."

One of the grounds of the dissenting opinion of Judge Denman in this case (R. 194-195) was that the majority opinion of the Court of Appeals did not dispose of the question raised as to the applicability of the section of the Civil Rights Act above quoted; and Judge Denman calls attention to the case of *Collins v. Hardyman*, (1951) 341 U.S. 651, and he concludes that the Court in that case held that the purpose of the act was:

> "to put the lately-freed Negro on an equal footing with his former master."

We do not understand the opinion in *Collins v. Hardyman* as holding that to be the only purpose of the Civil Rights Act. The case of *Collins v. Hardyman* arose under Section 47 of the Civil Rights Act which deals with conspiracy and the Court held:

> "The facts alleged fall short of a conspiracy to alter, impair or deny equality of rights under the law, though they do show a lawless invasion of rights for which there are remedies in the law of California" (341 U.S. 813).

Petitioner cites the case of *Hurd v. Hodge*, (1948) 334 U.S. 24. In that case the District Court for the District of Columbia had enjoined certain Negroes from purchasing property in the District of Columbia in an area where the ownership of real property was restricted to whites. The District Court had also enjoined certain white persons,

notably one Urciolo, from leasing, selling or conveying real property to a Negro. Not only were the rights of Negroes involved, but also those of the white person Urciolo. The Court of Appeals affirmed the judgment of the District Court. The Supreme Court reversed it. After quoting Section 1978 R.S.U.S., which reads:

> "All citizens of the United States shall have the same right in every state and territory as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property,"

the Court said:

> "All petitioners in these cases, as found by the District Court, are citizens of the United States. We have no doubt that for the purposes of this section the District of Columbia is included within the phrase 'every state and territory' * * * " (p. 30).

And again, at page 34:

> "White sellers, one of whom is petitioner here, have been enjoined from selling the properties to any Negro or colored person. Under such circumstances to suggest that the Negro petitioners have been accorded the same rights as white citizens to purchase, hold and convey real property, is to reject the plain meaning of language. We hold that the action of the District Court directed against the Negro purchasers and the white sellers denies rights intended by Congress to be protected by the Civil Rights Act, and that consequently the action cannot stand."

It would appear, therefore, that the purpose of the Civil Rights Act, including both Sections 41 and 42 (R.S. Secs.

1977 and 1978), was a little more than to put the lately-freed Negro on an equal footing before the law with his former master, and the same protection was given to a "white seller" who sells property to a Negro purchaser as is guaranteed to a white seller who sells to a white purchaser. Urciolo, who was sued along with the Negro purchaser, was obliged to assert his rights under the Civil Rights Act and those rights, as well as those of the Negro purchaser, were adjudicated in the suit.

The Civil Rights Act is expressly applicable to territories and it would seem that the protection afforded by the Fourteenth Amendment upon which the Court says, in the *Takakashi* case, the Civil Rights Act rests, would without doubt apply in the territories.

If, as the Court said in the *Takahashi* case, the Fourteenth Amendment and the laws adopted under its authority embody a general policy that all persons lawfully in this country shall abide "in any state" on an equality of legal privileges with all citizens under non-discriminatory laws and this protects an alien, ineligible to citizenship, to fish in the waters off the state of California on an equality with all other residents and citizens of California, there would seem to be no question but that a citizen of the state of Washington or the state of Oregon should be entitled to abide in the Territory of Alaska on an equality of legal privileges with all other citizens and under non-discriminatory laws.

There are two cases frequently cited to support the proposition that the Fourteenth Amendment does not apply to territories. *South Puerto Rico Sugar Co. v. Buscaglia,* (1946, 1 Cir.) 154 F. 2d 96; *Anderson v. Scholes,* (1949) 83 F. Supp. 681. The case of *South Puerto Rico Sugar Co. v. Buscaglia* involved a statute imposing a higher income tax on foreign corporations than upon domestic corporations. The statute was held to be valid. The case of *Anderson v. Scholes* involved a territorial statute providing for service of process upon nonresidents. The statute was held invalid under the Fifth Amendment and the privileges and immunities clause of Article IV, Sec. 2, Federal Constitution. The first case citos no authority for its conclusion and the second one relies upon cases involving unorganized territories having no legal legislatures. On the other hand, the Federal Courts have recognized without discussion that the amendment is a limitation upon the legislative powers of an organized territory. *W. C. Peacock & Co. v. Pratt,* (1903) 121 F. 772, Cf. *Johnson v. Kennecott Copper Corp.,* (1916) 5 Alaska 571.

That organized territories, aspiring to statehood, and engaged in the structure of fiscal programs to facilitate the achievement of that objective should be subject to at least the same limitations in the exercise of the taxing power as states only makes common sense.

The decisions in cases arising under the Civil Rights Act

are unanimous in the view that it extends to all persons in every state and territory at least all of the protections guaranteed by the Fourteenth Amendment. In *County of San Mateo v. Southern Pacific Railway Co.*, (1882) 13 F. 145 Judge Field said:

> "Equality of protection is thus made the constitutional right of every person; and this equality of protection implies not only that the same legal remedies shall be afforded to him for the prevention or redress of wrongs and the enforcement of rights, but also that he shall be subjected to no greater burdens or charges than such as are equally imposed upon all others under like circumstances. No one can, therefore, be arbitrarily taxed upon his property at a different rate from that imposed upon similar property of others, similarly situated, and thus made to bear an unequal share of the public burdens. Property may indeed be classified, and different kinds be subjected to different rates. Real property may be taxed at one rate and personal property at another. Property in particular places may be taxed for local purposes, while property situated elsewhere is exempt. License taxes may also vary in amount according to the calling or business for which they are exacted. But arbitrary distinctions not arising from real differences in the character or situation of the property, or which do not operate alike upon all property of the same kind similarly situated, are forbidden by the amendment. Equality in the imposition of burdens is the constitutional rule as applied to the property of individuals, where it is subject to taxation at all; and this imports that an uniform mode shall be followed in the estimate of its value, and that the contribution exacted shall be in some uniform proportion to such value prescribed, according to the nature or position of the property. All state action, constitutional or legislative, impinging upon the enforcement of this rule, must give way before it. Congress, in its legislation since the adop-

tion of the amendment, has recognized this to be the rule. The amendment was adopted in 1868, and in 1870 congress re-enacted the civil rights act; and to the clause that all persons within the jurisdiction of the United States should enjoy the same rights as white citizens, and be subject only to like punishment, pains, and penalties, it added, and be subject only to like *taxes, licenses, and exactions of every kind, and to no other.*' Rev. St. Sec. 1977."

Accord: *Kentucky v. Powers*, (1905) 139 F. 452; *Murphy v. Ramsey* (1885), 144 U.S. 15 (involving inhabitants of territories and recognizing the equal application of the statute to territories); *Strauder v. West Virginia* (1879), 100 U. S. 303; *Holden v. Hardy* (1897), 169 U. S. 366, *Hurd v. Hodge* (1948), 334 U. S. 24.

Indeed, it may well be urged that the broad language of that statute effects a greater restriction upon the taxing power than does the amendment. Cf. *Takahashi v. Fish & Game Commission* (1948), 334 U. S. 410. Apparently this statute was completely overlooked in the *South Puerto Rico Sugar Co.* and *Anderson* cases and in the *Haavik* case.

V.

Chapter 66 Conflicts with the White Act for the Regulation of the Fisheries of the United States in the Waters of Alaska.

The fisheries of the United States are regulated and administered by the Act of Congress of June 6, 1924 (c. 272, Sec. 1, 43 Stat. 464; 48 USCA, Secs. 221, 222 et seq.)

Section 3 of the Alaskan Organic Act, *supra*, (48 USCA, Sec. 24) provides that the authority granted the legislature of Alaska by the Organic Act "to alter, amend, modify and

repeal laws in force in Alaska shall not extend to the customs, internal revenue, postal, or other general laws of the United States or to the game, fish and fur-seal laws * * *". This section further provides that neither shall this authority extend to taxes on business and trade, but the legislature is authorized to impose other and additional taxes or licenses.

The authority to impose additional taxes, however, does not mean discriminatory taxes.

The law in force in Alaska regulating the fisheries is known as the White Act passed on June 6, 1924. Section 222 contains the following provision:

> "Nor shall any citizen of the United States be denied the right to take, prepare, cure or preserve fish or shellfish in any area of the waters of Alaska where fishing is permitted by the Secretary of Commerce."

It will be observed that in the White Act Congress refers to the fisheries regulated as "the fisheries of the United States in all waters of Alaska."

It will be conceded that the language of the White Act prohibits a denial of the right to fish, and it may be argued that the tax in question on nonresident fishermen does not amount to a denial even although it discriminates against nonresident citizens by the imposition of a tax ten times higher than that levied on resident fishermen.

In the case of *Freeman v. Smith* (9th Cir. 1930) 44 F.2d 703; (9th Cir. 1932) 62 F.2d 291, there was involved a tax of $250.00 on nonresident fishermen while the tax on residents was $1.00.

The Court said in that case, after referring to the White Act for the regulation of the fisheries of the United States:

"It will thus be seen that the right to take, prepare, cure, or preserve fish or shellfish in any area of the waters of Alaska, where fishing is permitted by the Secretary of Commerce, is guaranteed to every citizen of the United States without reservation, whether he be a resident of Alaska or not; and the right so granted cannot be impaired or destroyed by the legislative assembly of the territory. If it can, the grant is an idle and empty one at best. Nor is the right thus conferred in anywise impaired by the last section of the act, which provides in general terms that nothing therein contained shall abrogate or curtail the powers granted the territorial Legislature to impose taxes or licenses nor limit or curtail any powers granted the territorial Legislature by the Organic Act.

* * *

"The naked power to impose taxes and licenses, or to make reasonable discrimination between residents and nonresidents, is not involved. On the contrary, the territory, under the guise of taxation, has attempted to destroy a right conferred by Congress on citizens of the United States, and asserts the broad right to do so because it has been endowed with the power to tax, and the power to tax is the power to destroy. The latter proposition may be true in fact as well as in theory, but it cannot be carried to the extent of destroying rights conferred by the constitution or laws of the United States. The claim of the territory is based, in a measure at least, on the erroneous assumption that the fish in Alaskan waters are the property of the inhabitants of the territory, under the unlimited control of the territorial Legislature. But no such right in the inhabitants of the territory, or in the territory itself, has ever been recognized by Congress. On the contrary, in the act to which we have referred, Congress has declared its pur-

pose to be to protect and conserve the fisheries of the United States in all waters of Alaska, and has delegated to the Secretary of Commerce full and complete authority to regulate the times and places when and where fish may be taken, the mode and extent of the taking, and almost every detail of the fishing industry, leaving little or nothing to the territory beyond the power to impose taxes and licenses. And this latter power cannot be so exercised as to defeat the general purpose of Congress, or destroy rights conferred by Congress upon citizens of the United States. We are of the opinion, therefore, that there is a plain and irreconcilable conflict between the act of Congress and the act of the territorial Legislature, and in such cases the latter must yield." (44 F.2d 704)

After the decision in the *Freeman* case the legislature passed another act in 1933 which continued the tax on residents at $1.00 and fixed the tax on nonresidents at $25.00.

In the case of *Anderson v. Smith* (9th Cir. 1934), 71 F.2d 493, the Court of Appeals upheld this tax, citing the case of *Haavik v. Alaska Packers Association*, 263 U.S. 510, *supra*, and the Court called attention to the provision in Section 3 of the Organic Act authorizing the legislature to levy additional taxes and licenses to those levied by Congress. The Court held that

> "So long as the license tax imposed by the territorial Legislature upon the citizens of the United States who are not residents of Alaska is not so exorbitant as to practically prohibit, or so unreasonable as to interfere with the exercise of the right granted by Congress, it is within the power of the territorial Legislature." (71 F.2d p. 495)

Neither of these cases was reviewed by the Supreme Court.

It will be seen, therefore, from an examination of these two decisions that the Appellate Court attempted to distinguish between a tax which it held to be unreasonable and one which it held to be reasonable and decided that so long as the tax appeared to be reasonable it was not a prohibitive discrimination within the language of the White Act. In the *Freeman* case a tax of $250.00 was held to be too high, while in the *Anderson* case a tax of $25.00 was upheld. This, then, confronts us with the task of drawing the line of demarkation between a tax which is unreasonable or too high and one which is deemed to be reasonable and not a discrimination or denial within the meaning of the White Act. If a tax of $250.00 is too high and amounts to a denial to nonresidents of the right to fish, is a tax of $240.00 too high or one of $200.00? If a tax of $25.00 is not a denial of the right to fish, would a tax of $45.00 or $50.00 or $100.00 amount to a denial? Where shall the line be drawn? It would seem, then, that if the determination of the question of the denial of a right to fish, a right given to all citizens under the White Act, depends on the amount of tax, then every time the legislature imposes a discriminatory tax on nonresidents it would require a lawsuit to determine on which side of the line this tax would fall and whether it was reasonable and permitted or excessive and prohibited. The legislature, relying on the decision in the *Anderson* case, continued a tax of $25.00 on nonresidents. Then in 1949, feeling that they had not yet reached the limit or the line between what is reason-

able and what is unreasonable, they doubled that tax and made it $50.00. Perhaps at the next session they might feel that $100.00 was still within the domain of what is reasonable. So that, unless some formula is found to settle the question of the extent to which the legislature may go, if indeed it can levy any higher taxes on nonresidents than on residents, the law will remain in confusion and neither the legislature nor the nonresident fisherman will know just where they stand with reference to these discriminatory taxes.

It would seem that this formula may be found in the case of *Toomer v. Witsell*, 334 U.S. 385, *supra*, and we refer the Court again to the language found at page 398 which limits the right to discriminate in the matter of taxes, to a differential "which would merely compensate the state for any added enforcement burden they may impose or for any conservation expenditures from taxes which only residents pay".

As we have pointed out hereinabove and as shown by the record in this case, there is no basis for any such differential whatsoever in Alaska under this formula. We wish to point out that in neither the *Freeman* case nor the *Anderson* case was the Civil Rights Act called to the attention of the Court or referred to in the decision. Even aside from the White Act it would seem that the earlier decisions of this Court, typical of which is *McCready v. Virginia* (1876), 94 U. S. 391, were based on the doctrine of state control of the fisheries in the tidal water of the state's rivers, bays and inlets.

The more recent decisions, however, such as the *Takahashi* and *Toomer* cases, *supra*, and the case of *United States v. State of California* (1947), 322 U. S. 19, have applied a different interpretation and have more narrowly restricted the state's jurisdiction over tidelands and fisheries within the tidal waters. The White Act and the Alaskan Organic Act are based on this modern doctrine. The Organic Act continues in Congress the sole right to regulate the fisheries of the United States in the waters of Alaska by expressly withholding from the local legislature the power of legislation on that subject and the right to regulate the fisheries. In other words, that power was lodged in Congress before the passage of the Organic Act and Congress retained it after the passage of the Act. The White Act regulating the fisheries of the United States in the waters of Alaska guaranteed the right to fish to all citizens of the United States, and this without regard to residence.

The decision of the Court in *Haavik v. Alaska Packers Association* (1924), 263 U. S. 510, falls in between the earlier cases and the more recent decisions in the *Toomer*, *Takahashi* and *California* cases; and the *Haavik* case was decided before the White Act was passed.

It seems clear that what Congress meant in the White Act by the language employed in 48 USCA, Sec. 222, by stating that no citizen of the United States should be denied the right to take, prepare, cure or preserve fish or shell-fish

in any area of the waters of Alaska where fishing is permitted, was that all citizens should be permitted to fish on an equality or on an equal basis as to taxes and regulations.

When we consider this section of the White Act along with the Civil Rights Act (8 USCA, Sec. 41) which provides that all persons within the jurisdiction of the United States in every state and territory shall be subject to the same taxes, licenses and exactions of every kind and to no other, we cannot escape the conclusion that the section of the White Act referred to was designed to put all citizens of the United States regardless of residence, on an equal footing in regard to their right to fish in the waters of Alaska.

CONCLUSION

For the reasons hereinabove stated it is respectfully submitted that the judgment of the Court below should be affirmed.

WHEELER GRAY,
ROY E. JACKSON,
CARL B. LUCKERATH,
Seattle, Washington,

Dated December 18, 1951.

WM. L. PAUL, JR.,
H. L. FAULKNER,
Juneau, Alaska.
Counsel for Respondents.

APPENDIX

CHAPTER 66, SESSION LAWS OF ALASKA, 1949

Section 1. For the purposes of this Act, "fisherman" shall mean any person who fishes commercially for, takes or attempts to take salmon, halibut, bottom fish, crabs, clams, or other fishery resources of Alaska, and shall include every individual aboard boats operated for fishing purposes who participates directly or indirectly in the taking of the raw fishery products above mentioned whether such participation be on shares or as an employee or otherwise. The term "fisherman" shall also include trap watchmen or others engaged in operating fish traps as well as the crews of tenders or other floating equipment used in handling fish.

Section 2. No person shall become engaged as a fisherman as above defined without first obtaining a license so to do. License fees levied upon fishermen are as follows: Resident fisherman, $5.00; nonresident fisherman, $50.00. Such licenses shall run for one calendar year, and expire on December 31st of each year. For the purposes of this Act, a resident shall be any citizen who has resided in the Territory for 12 months immediately preceding application for such license and shall have been a bona fide inhabitant of Alaska for at least six months each calendar year thereafter, and who maintains his place of abode in Alaska. A nonresident is a citizen who has not resided in Alaska for the 12 months immediately preceding application for license or

who maintains his principal business or place of abode outside of the Territory. Any person not a citizen of the United States is deemed to be an alien unless he possesses a valid declaration of intention to become such citizen.

* * * * * *

Section 6. * * * (b) Licenses shall be subject to inspection, and shall, upon request by any officer authorized to enforce this Act, be exhibited to him. Failure to procure or exhibit such license as indicated above, or otherwise comply with this Act shall be a misdemeanor, and upon conviction thereof the offender shall be subject to a fine not exceeding $500.00 or imprisonment not to exceed six months, or to both such fine and imprisonment.

Section 7. This Act shall not apply to fishing for personal consumption but shall apply only to fishing for commercial purposes; * * *

Section 8. Sections 39-4-1 to 39-4-16, inclusive except 39-4-11, Alaska Compiled Laws Annotated 1949, are hereby repealed.

Section 9. If any provisions of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of the Act and such application to other persons or circumstances shall not be affected thereby.

Section 10. An emergency is hereby declared to exist and

this Act shall take effect immediately upon its passage and approval. Approved March 21, 1949.

ACT AUG. 24, 1912, c.387 § 3, 37 STAT. 512 48 USCA § 23

Constitution and laws of the United States extended. The Constitution of the United States, and all the laws thereof which are not locally inapplicable, shall have the same force and effect within the said Territory as elsewhere in the United States. All the laws of the United States passed prior to August 24, 1912, establishing the executive and judicial departments in Alaska shall continue in full force and effect until amended or repealed by Act of Congress; except as herein provided all laws in force in Alaska prior to that date shall continue in full force and effect until altered, amended, or repealed by Congress or by the legislature. (Aug. 24, 1912, c. 387, § 3, 37 Stat. 512.)

ACT AUG. 24, 1912,c. 387 § 3, 37 STAT. 512, 48 USCA § 24

The authority granted to the legislature by Section 23 of this title to alter, amend, modify, and repeal laws in force in Alaska shall not extend to the customs, internal revenue, postal, or other general laws of the United States or to the game, fish, and fur seal laws and laws relating to fur-bearing animals of the United States applicable to

Alaska, or to the laws of the United States providing for taxes on business and trade, or to Sections 41, 47, 161 to 169, 321 to 325, and 329 of this chapter. This provision shall not operate to prevent the legislature from imposing other and additional taxes or licenses.

ACT AUG. 24, 1912, c. 387 § 9, 37 STAT. 514
48 USCA § 77

Same; general power and limitation. The legislative power of the Territory of Alaska shall extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States, * * *

ACT JUNE 6, 1924, c. 272 § 1, 43 STAT. 464
48 USCA § 222

Unlawful fishing in areas; no exclusive rights to be granted; citizens. From and after the creation of any such fishing area and during the time fishing is prohibited therein it shall be unlawful to fish therein or to operate therein any boat, seine, trap, or other gear or apparatus for the purpose of taking fish; and from and after the creation of any such fishing area in which limited fishing is permitted such fishing shall be carried on only during the time, in the manner, to the extent, and in conformity with such rules and regulations as the Secretary prescribes under the authority herein given: *Provided* that every such regulation made by the Secretary of Commerce shall be of general application within

the particular area to which it applies, and that no exclusive or several right of fishery shall be granted therein, nor shall any citizen of the United States be denied the right to take, prepare, cure, or perserve fish or shellfish in any area of the waters of Alaska where fishing is permitted by the Secretary of Commerce. (June 6, 1924, c. 272, § 1, 43 Stat. 464.)

ACT OF JUNE 6, 1924, c. 272 § 8, 43 STAT. 467, 48 USCA § 228

Territorial powers not abrogated or curtailed. Nothing in sections 221 to 228 of this title contained, nor any powers conferred by said sections upon the Secretary of Commerce, shall abrogate or curtail the powers granted the Territorial Legislature of Alaska to impose taxes or licenses, nor limit or curtail any powers granted the Territorial Legislature of Alaska by Sections 23, 24, 44, 45, and 67 to 90 of this title.